

EXHIBIT 1

*Excerpts of January 17, 2023, Deposition of
County Judge Mark Henry*

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY)
PETTEWAY, et al.)
) Case No. 3:22-cv-00057
VS.)
)
GALVESTON COUNTY, et)
al.)

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY
JANUARY 17, 2023

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY,
produced as a witness at the instance of the Plaintiff and
duly sworn, was taken in the above styled and numbered
cause on Tuesday, January 17, 2023, from 9:08 a.m. to
6:07 p.m., before Janalyn Elkins, CSR, in and for the
State of Texas, reported by computerized stenotype
machine, via Zoom, pursuant to the Federal Rules of Civil
Procedure and any provisions stated on the record herein.

1 Q. But also to keep Galveston County red?

2 A. I truly do what I can for all of the
3 candidates. So -- so Republican candidates, of course.

4 Q. And what about personally, is it a personal
5 goal of yours to keep Galveston County red?

6 A. I believe that we have demonstrated good
7 governance and would like to keep it that way, yes.

8 Q. Why in your mind -- well, let me ask you this.
9 Is Galveston at any risk of not staying
10 red?

11 A. I don't know. I wouldn't think so, but I don't
12 know.

13 MS. KLEIN: All right. This is where we
14 could take a break, but I'm happy to just keep on going
15 on.

16 THE WITNESS: Keep going.

17 MS. KLEIN: Okay. Is that okay with the
18 other parties?

19 Q. (BY MS. KLEIN) All right. We're going to
20 switch gears a little bit. We're going to talk about --
21 I'm going to ask you about redistricting in 2011.

22 A. Okay.

23 Q. So you served as county judge during the
24 redrawing of Commissioner's Court precincts in 2011,
25 right?

1 A. Correct.

2 Q. So I'm going to talk about this and I'm going
3 to say the 2011 redistricting process to talk about
4 that --

5 A. Okay.

6 Q. -- and I will be talking about Commissioner's
7 Court unless I specify otherwise.

8 A. Okay.

9 Q. Does that make sense?

10 A. So we're not -- unless you say otherwise, we're
11 not talking about JP precincts?

12 Q. Correct.

13 A. All right. Got it.

14 Q. Do you remember signing an engagement letter
15 with attorneys to help you with 2011 redistricting
16 process?

17 A. Do I remember exactly doing it, no. But I
18 remember it happening, yes.

19 MS. KLEIN: Okay. Can we please put up
20 Tab 116? And this will be marked as Exhibit 7.

21 (Exhibit No. 7 was marked.)

22 Q. (BY MS. KLEIN) That first page says
23 Addendum -- Agenda Item 12. Do you recognize what that
24 might mean?

25 A. That's generally what would come before the

1 backup. So the agenda item would have been No. 12 and
2 this would have been probably the backup for that item
3 for any commissioner to look at or any public member as
4 well.

5 Q. When you say, "backup," do you mean the meeting
6 package?

7 A. That would be a term for it, yes.

8 Q. Okay. And is that publicly posted?

9 A. Yes.

10 Q. Is it publicly posted at the same time as the
11 agenda?

12 A. As far as I know, yes.

13 Q. In general, not this specific time, but in
14 general it's posted?

15 A. Yes.

16 Q. Okay. So if we scroll down to the second page,
17 this document is dated May 16, 2011. It's addressed to
18 you, right?

19 A. Uh-huh. Yes.

20 Q. And it says -- the subject is 2011
21 Redistricting of Galveston County Commissioner's
22 Precincts and it also says Justice of the Peace
23 Precincts, Constable Precincts, Election Precincts, and
24 Preclearance Submission Project Engagement Letter. That
25 is a big title.

1 A. Right.

2 Q. What is meant by preclearance there?

3 A. Not being a lawyer, I'm going to assume that
4 this is part of the Voting Rights Act preclearance that
5 would have been required in 2011.

6 MS. KLEIN: Okay. So let's scroll through
7 slowly all the way to the end, Alexa.

8 Q. (BY MS. KLEIN) And this isn't a signed
9 version. But is there any reason you would think that
10 this is not the version that was ultimately executed?

11 A. No, that's probably it.

12 Q. Okay. Going back to the first page, and
13 there -- that one, two, three, third paragraph says, Joe
14 Nixon, Trey Trainor, and Dale Oldham, attorneys at law,
15 365 per hour.

16 Do you see that?

17 A. Yes. It's just bouncing around. I see it now.

18 Q. Those were the lawyers that worked on the
19 Galveston County commissioner's precincts for
20 redistricting in 2011?

21 A. That is correct.

22 Q. Okay. We can take that down.

23 Do you remember what timeline restricting
24 of commissioner's precincts had to be completed by in
25 the 2011 redistricting process?

1 on the Commissioner's Court meeting agenda in
2 January 2021?

3 A. I don't remember that, but it sounds right.

4 Q. Okay. I can -- I can pull it up if you -- if
5 you need -- if you want me to. I can pull it up. I'm
6 willing to represent it --

7 A. Okay.

8 Q. -- for the record. Do you remember that that
9 item was deferred at that time?

10 A. I don't remember that.

11 Q. Okay. Do you remember why it might have been
12 deferred?

13 A. Since I don't remember it being deferred, I
14 don't remember why.

15 Q. All right. They were eventually -- Holtzman
16 Vogel, redistricting counsel, and Dale Oldham were
17 eventually approved and retained by the Commissioner's
18 Court in April of 2021. Does that timing sound right to
19 you?

20 A. Sounds about right.

21 MS. KLEIN: Let's go to Tab 31, please,
22 Alexa. This will be Exhibit 17.

23 (Exhibit No. 17 was marked.)

24 Q. (BY MS. KLEIN) Do you recognize this document?

25 A. It appears to be one of our agendas for

1 April 5th in this case.

2 Q. And scroll down -- if we could scroll down to
3 Item 11, please. And can you read Item 11?

4 A. (Reading:) Consideration of approval of an
5 engagement of counsel based on 2020 census submitted by
6 county judge.

7 Q. Do you recall if there's a meeting package for
8 this meeting?

9 A. What do you mean a meeting package?

10 Q. What we talked about before, the materials
11 associated --

12 A. Oh, the backup.

13 Q. The backup, you call it the backup. I'll call
14 it the backup now, too.

15 Do you recall if there's a backup for this
16 meeting?

17 A. There's a backup for every meeting, not every
18 single item has got a backup document to go with it.

19 Q. Do you remember if this item had a backup
20 document?

21 A. No, I don't remember.

22 Q. Okay. I'm going to actually take the time to
23 take you to that.

24 A. Okay.

25 MS. KLEIN: Or you know, I can save the

1 time if counsel is willing to represent that we don't
2 need to authenticate the backup that we got from the
3 county website.

4 MR. RUSSO: In terms of, like, authenticate
5 it and ask him if it's a county --

6 MS. KLEIN: If it's accurate, the version
7 that was posted on the county website is accurate.

8 MR. RUSSO: I can't tell you that I've seen
9 it, frankly. So it's hard for me to make the
10 representation.

11 Q. (BY MS. KLEIN) All right. That's fair. We'll
12 do it -- Doc 32. Just trying to save --

13 MR. RUSSO: I understand.

14 Q. (BY MS. KLEIN) Let's pull up Doc 32, so it
15 will be Exhibit 18.

16 (Exhibit No. 18 was marked.)

17 Q. (BY MS. KLEIN) And this -- this is a large
18 document so it is going to take a little bit of time.
19 But while we're waiting for it -- for to load, who
20 decides what will be in the backup?

21 A. Dianna, although we -- you know, to the extent
22 possible, we like everything to have backup if we can.
23 Just that all things -- we don't get some things in on
24 time. Some things you can't really put a backup to,
25 appointments, for example. So some things just don't

1 have a backup or can't -- doesn't get there quick
2 enough.

3 Q. So we saw that it was Item Agenda 11. Do you
4 remember that?

5 A. Yes.

6 Q. So when this loads, it's a big file, but when
7 it loads, I'm going to take you to PDF pages 239, if you
8 could scroll to that. And it says Agenda Item 10. Do
9 you see that?

10 A. Yes.

11 Q. And if we keep scrolling please and keep
12 scrolling to the next page, please. And then it says
13 Agenda Item 12, right?

14 A. Yes.

15 Q. So it appears there's no backup materials for
16 Agenda Item 11, correct?

17 A. Correct.

18 Q. Do you remember why no backup materials?

19 A. No, I have no idea.

20 Q. So the -- for example, the -- you know, the
21 proposed retainer agreement was not included in this
22 agenda packet, correct?

23 A. It doesn't appear that way, correct.

24 Q. And if we go back to Exhibit 17, the agenda
25 itself, and you just read that. Do you remember it

1 saying who the attorneys that were proposed counsel
2 would be?

3 A. No, I don't remember.

4 Q. So let's scroll to -- again, back to Agenda
5 Item 11. Does it say anywhere on this?

6 A. No.

7 Q. So would a member of the public from these
8 public materials know who the proposed redistricting
9 counsel would be?

10 A. I wouldn't think so.

11 Q. Is there any other way they might know who
12 redistricting counsel would be?

13 MR. RUSSO: Objection, calls for
14 speculation.

15 THE WITNESS: I don't know.

16 Q. (BY MS. KLEIN) I mean, you know what
17 information is posted about the commissioner court
18 meeting you preside over before?

19 A. Right. And we're required to publish the item
20 to be considered, not the details of every transaction.

21 Q. But didn't you just say that you try to include
22 things whenever you can for the backup?

23 A. Yes.

24 Q. So do you know why you chose not to include the
25 draft?

1 MR. RUSSO: Objection, asked and answered.

2 THE WITNESS: It becomes a public document.

3 We're not trying to hide anything.

4 Q. (BY MS. KLEIN) But you agree you didn't --
5 it's not included in the notice material?

6 A. I agree it did not get into the backup at the
7 time of the posting.

8 Q. So someone would have to actually go to the
9 meeting to understand who the proposed counsel were
10 going to be, right?

11 A. Or what's online.

12 Q. So if somebody, say, objected to using the same
13 counsel as last redistricting cycle, they wouldn't have
14 known that unless they had chosen to show up to the
15 meeting to find out, correct?

16 MR. RUSSO: Objection, calls for
17 speculation.

18 THE WITNESS: I assume so.

19 Q. (BY MS. KLEIN) Do you think -- strike that.

20 Does it surprise you that the January 25th
21 meeting where we talked about how the item was deferred
22 that it was not in that meeting packet either?

23 MR. RUSSO: Objection, calls for
24 speculation.

25 THE WITNESS: No.

1 Q. (BY MS. KLEIN) Other than Dale Oldham, do you
2 know of any other counsel who worked -- who represented
3 you in the 2021 process that also specifically had
4 worked with you in 2011 on the redistricting process?

5 A. No, I -- no.

6 Q. Do you remember what discussion, if any, there
7 was in the April 2021 meeting where you decided to
8 retain counsel what discussion there was at that meeting
9 about retaining counsel?

10 A. There was no discussion. It's on consent.

11 Q. Which means it just goes to a vote?

12 A. Right.

13 Q. Do you remember the vote on this item?

14 A. I do not. Unless someone pulled it off, it was
15 everyone present, but I don't know who was present at
16 that meeting.

17 Q. Let's go to the meeting minutes for this.
18 That's Tab 33. And this will be Exhibit 19.

19 (Exhibit No. 19 was marked.)

20 Q. (BY MS. KLEIN) Do you want to guess who voted
21 for and who voted against?

22 A. Was it --

23 MR. RUSSO: Objection, calls for
24 speculation.

25 THE WITNESS: Was it removed from consent

1 agenda?

2 Q. (BY MS. KLEIN) Let's scroll to -- let's scroll
3 to 11, Item 11 here, it says, (Reading:) Consideration
4 of approval of an engagement of counsel based on 2020
5 census submitted by county judge. Motion to approve
6 consent agenda Item 11 only by County Judge Henry,
7 seconded by Commissioner Giusti and it says passed 4-1.

8 A. Okay. So it was pulled off consent agenda and
9 Commissioner Holmes voted against it.

10 Q. Do you know why he voted against it?

11 A. Do not.

12 Q. Was there -- if it was pulled off consent
13 agenda, was there discussion about it?

14 A. There could have been. If it's pulled off
15 consensual, you're allowed to discuss it now. That
16 doesn't mean there has to be. And I'll just tell you
17 many, many times Commissioner Holmes will say just pull
18 it off because I'm going to vote against it.

19 Q. Okay. Do you remember if there was discussion
20 about it in this meeting?

21 A. No, I don't remember.

22 Q. All right. So you eventually retained the
23 counsel. I'd like to show you that engagement letter.

24 A. Okay.

25 Q. That's -- and we can pull this down. And let's

1 pull up Document 34. This is going to be Exhibit 20.

2 (Exhibit No. 20 was marked.)

3 Q. (BY MS. KLEIN) While we're waiting for it to
4 load, let me ask you, what was your expectation for the
5 scope of work your redistricting counsel would provide
6 for you in the 2021 redistricting process?

7 A. What was my expectation about the scope of his
8 work?

9 Q. What did you think Holtzman Vogel was going to
10 do for you with respect to the 2021 redistricting
11 process?

12 A. I -- well, I want to be clear that my belief
13 was that Dale was really the person that I was hiring.
14 Holtzman Vogel comes with him. I understand that. But
15 that Dale would get us a legally compliant map that gets
16 us in balance for the -- with the census data we have
17 available.

18 Q. So your understanding was that Dale would draft
19 the map for you?

20 A. Yes.

21 Q. Did you have the understanding he would draft
22 several maps for you?

23 A. I don't know that I gave him an upper and lower
24 limit. The more maps he drafts, the more he charges us.
25 But, you know, it could be more than one.

1 Q. Did you give him any concept maps or
2 description before he started drafting?

3 A. Concept maps, no, I don't know how to do that.
4 Drafts -- I'm sorry. Direction --

5 MR. RUSSO: Before you complete, facts
6 related to the representation, legal -- the legal
7 services are okay, but don't provide or disclose
8 communications between you and Mr. Oldham specifically
9 related for legal services.

10 THE WITNESS: Well, I think that's what I
11 would be answering.

12 MR. RUSSO: Well, the difference being the
13 facts as to -- again, you talked about what he was
14 supposed to do for you.

15 THE WITNESS: Okay.

16 MR. RUSSO: That's fine. But how he's
17 going to do it is a different question. Do you
18 understand?

19 THE WITNESS: Yes, I think.

20 Q. (BY MS. KLEIN) Let me separate this out. I'm
21 not going to ask you about what Dale thought about the
22 legal requirements. I'm not going to ask you what
23 Mr. Oldham thought, you know, about what was legally
24 required or advice he gave you specifically.

25 But I do want to know about, you know, the

1 drafting process, just the maps and the ideas you had,
2 not about whether they were legal or not or anything,
3 but just if you had an idea geographically -- putting
4 all the legal stuff aside if you had an idea
5 geographically that you shared with Mr. Oldham when you
6 retained him about what the maps or proposed maps should
7 look like?

8 THE WITNESS: Is that okay?

9 MR. RUSSO: There's no question pending.
10 She's just making a statement so...

11 Q. (BY MS. KLEIN) So I'll ask the question. Did
12 you share with him any geographic concept ideas about
13 what one or more proposed maps should look like?

14 MR. RUSSO: Again, you can answer in hiring
15 and what the general retainage was about and for. But
16 specifics as to him providing legal services or
17 financial matters or what the facts could be related to
18 specific advice he was providing are off the table.

19 THE WITNESS: Well, then I guess I can't
20 answer that.

21 MS. KLEIN: Okay. I'm going to interpose,
22 just for the record preserve the right -- because I
23 understand this is related to an issue that's pending
24 before the Court. So -- so I'm going to just preserve
25 the right to ask that question again if we get a

1 different determination from the Court in the future on
2 this issue. But I'm going to keep asking this line of
3 questions and just to preserve our rights.

4 MR. RUSSO: I understand.

5 MS. JAYARAMAN: Hi, this is Tharuni
6 Jayaraman for the United States. The United States also
7 joins in preserving.

8 MS. RICHARDSON: Petteway plaintiff joins
9 in the reservation as well.

10 Q. (BY MS. KLEIN) Apart from wanting a legal map,
11 did you have any other goals or objectives for how the
12 county commissioners' new precincts should look?

13 MR. RUSSO: Same reservation in terms of
14 the attorney-client privilege. To the extent that you
15 can describe the general retainage, that's okay. I
16 would waive --

17 THE WITNESS: Can I step out and ask him a
18 question? Because I don't know -- I just don't know if
19 this is privileged or not.

20 MS. KLEIN: We can go off the record if you
21 want.

22 THE WITNESS: Yes.

23 MS. KLEIN: But before that, let me just
24 clarify. That question, I didn't ask anything about an
25 attorney anywhere. I'm just asking about Judge Henry's

1 would -- the data was going to come out in August?

2 MR. RUSSO: Objection, calls for -- I'm
3 sorry. Improper hypothetical or incomplete
4 hypothetical.

5 THE WITNESS: Yeah. I don't know how you
6 can set a timeline when you don't know for sure when
7 you're going to have information to work with.

8 Q. (BY MS. KLEIN) But they had announced August,
9 correct?

10 A. And they often get things wrong.

11 Q. But you could have, for example, planned to put
12 redistricting on, you know, regular meeting agendas, for
13 example, at that time, right?

14 A. For what purpose? No. I don't know what you
15 would do. Once we have accurate precinct data, then
16 it -- you know, we're not his only client,
17 unfortunately. He's going to have to work us in with
18 everyone else and we'll get drafts back at some point.

19 But putting it on the agenda just because
20 the Census Bureau provides the corrected information,
21 what would the agenda item even be? There's nothing
22 there to do.

23 Q. You remember earlier we talked about what had
24 happened in the 2011 process and there was that
25 August 2, 2011 presentation about the census data in one

1 of the regular meetings. Do you remember that?

2 A. Not really, but, okay, I'm sure it happened.

3 Q. You know, did you plan on having a similar
4 presentation about the census data, you know, maybe the
5 next September meeting, for example? At this time did
6 you make any plans like that saying, okay, the data is
7 going to be released in August so the first regular
8 meeting in September we'll have our presentation like we
9 did last cycle of census demographics for the county?

10 A. No, because we wouldn't have -- we wouldn't
11 have known for sure when to plan that. And we don't --
12 we don't put things on the agenda six months for now.
13 We put things on the agenda for next Monday.

14 Q. Okay. Well, let me ask you this. When the
15 data did come out in August, did you put that on the
16 agenda?

17 A. For what purpose? No. But I don't know what
18 purpose we would put it on the agenda for.

19 Q. To have a meeting to describe the census data
20 as you had, you know, last cycle in 2011, did you put
21 that on the agenda ever?

22 A. No.

23 Q. Do you remember why not?

24 A. No one asked me -- no attorney told me we
25 should do this.

1 Q. Did you make any announcement publicly -- not
2 in just a meeting, but did you make any public
3 announcement to Galveston residents about what the
4 census data had to say about Galveston?

5 A. I don't think so.

6 Q. Did you see any analysis of that census data
7 yourself?

8 A. When it first came out? No.

9 Q. What about later?

10 A. I suspect I would only have seen any
11 information relating to a proposed map is my guess.

12 Q. So other than counsel, did you see any summary
13 of the census data for Galveston?

14 A. No. Other than I did see the general
15 population, the total population.

16 Q. When did you see that?

17 A. Whenever that came out I saw it. I'm assuming
18 August or September.

19 Q. So turning back to Ms. Johnson, do you remember
20 her following up again with your office after the census
21 data was released?

22 A. I remember that she was asking for at least a
23 part-time personnel for input data. Other than that, I
24 don't recall anything else.

25 Q. All right. Let's pull up that document. It's

1 Q. (Reading:) Please submit your support for
2 proposed map 2. This map creates a much needed coastal
3 precinct. Having a coastal precinct will ensure that
4 those residents directly along the coast have a
5 dedicated advocate on Commissioners Court.

6 So is it fair to say that by October 29th
7 you had decided you're going to vote for Map 2?

8 A. Having had -- having no reason not to,
9 probably.

10 Q. What do you mean, "no reason not to"?

11 A. In short of someone coming in and saying, hey,
12 it turns out that Map 2 is out of population deviation,
13 it's got a problem with something, some other problem,
14 then, yes.

15 Q. Sorry. I'm just trying to eliminate questions
16 we might have already covered. If you'll give me a
17 moment.

18 A. Okay. That's fine.

19 Q. So is it true that the first time a quorum of
20 commissioners met in the same room to discuss the draft
21 maps was the November 12, 2021 hearing?

22 A. I believe that would be correct, yes.

23 Q. Is there any other possibility you can think of
24 other than that hearing beforehand?

25 A. No, I don't think so.

1 Q. And you had taken great care to make sure that
2 that was the first time everybody met to discuss the
3 maps together, right?

4 A. Correct. We would not have been able to meet
5 short of a posted meeting.

6 Q. Are you aware of whether any other commissioner
7 prepared a proposed map that was not posted on this
8 website?

9 A. At the November 12th meeting Commissioner
10 Holmes introduced two maps that we saw -- all saw for
11 the first time there.

12 Q. And when did you learn that Commissioner Holmes
13 would have his own proposal?

14 A. When he stood up and introduced it.

15 Q. Are you -- do you know why that wasn't one of
16 the drafts that Dale had put together in the beginning?

17 A. I do not know.

18 Q. Do you remember that Commissioner Holmes also
19 passed out an RPV study at that November 12th hearing?

20 MR. RUSSO: Objection, calls for
21 speculation. Vague and ambiguous.

22 MS. KLEIN: I will --

23 MR. RUSSO: At least ask him what that is.

24 Q. (BY MS. KLEIN) I'll clarify. Are you aware of
25 what racially polaris voting study is?

1 Interrogatory 1. It says -- sorry, the Interrogatory
2 No. -- the Supplemental Response.

3 MS. KLEIN: Sorry, Alexa, just a little bit
4 further down. Thank you.

5 Q. (BY MS. KLEIN) (Reading:) Defendants state
6 that the Galveston County Commissioners Court considered
7 the following factors in adopting the 2021 redistricting
8 plan.

9 If you never talked about this with the
10 other commissioners, how do you know that that statement
11 is true and accurate?

12 A. That would be a question that I think that the
13 lawyers would have posed to other commissioners.

14 Q. But you -- when you signed this document, you
15 didn't know whether that was true, right?

16 A. Whether what is true, that if the lawyers
17 talked to them?

18 Q. No. That the Galveston County Commissioner's
19 Court considered these factors.

20 MR. RUSSO: Counsel, are you taking issue
21 with the lawyers preparing the response on behalf of the
22 County?

23 MS. KLEIN: No. I'm --

24 MR. RUSSO: -- because that's what
25 happened.

1 MS. KLEIN: I'm asking how he knew it was
2 true that the Commissioner's Court considered these
3 criteria if he never was able to confirm that.

4 MR. RUSSO: You know that he's got to rely
5 on counsel's discussions with other folks. There's
6 one -- he's one person that's verifying the responses.
7 This is a ridiculous line of questioning.

8 Q. (BY MS. KLEIN) I'm just -- I'm going to go
9 through and X out things that we've already covered if
10 you'll give me a little bit -- a moment.

11 A. Yeah, sure.

12 Q. So fair to say you never discussed these six
13 listed criteria with the other commissioners directly?

14 A. I may have discussed them with one. But
15 certainly not more than one.

16 Q. Did you apply these criteria when you were
17 providing input on draft maps as they're stated here?

18 A. The first one, absolutely, and then after that
19 the coastal precinct was the only other factor that I
20 would have said.

21 Q. Let's -- I'm going to follow up on that voting
22 precinct issue and then we'll move on.

23 MS. KLEIN: Alexa, could you -- can you
24 scroll down to Interrogatory No. 2, please? Try to be
25 quick about this.

1 MR. RUSSO: Yeah. I'm sorry. I'm just --
2 which conversation are you speaking about?

3 Q. (BY MS. KLEIN) Right before the break I was
4 asking, you know, with respect to your awareness of, you
5 know, racial breakdown by Map Proposal 2 district and
6 your awareness of that.

7 And you said that you couldn't answer -- if
8 I remember correctly, you said you couldn't answer
9 because it was told to you, whatever you knew was told
10 to you by your attorneys. Do you remember that?

11 A. Yes.

12 Q. So which is who, which attorneys is what I'm
13 asking?

14 MR. RUSSO: You can answer that.

15 THE WITNESS: Dale Oldham primarily. To a
16 lesser extent Joe Nixon in 2011-2012.

17 Q. (BY MS. KLEIN) Okay. And Just to clarify the
18 privilege objection and whether or not you're going to
19 answer, so you -- your position is you are not willing
20 to confirm whether you were aware of any of these, you
21 know, racial data or partisan data facts at a later date
22 after learning them from an attorney, correct?

23 MR. RUSSO: Well, let me just tell you what
24 my objection is. It's not to reveal conversations that
25 he or information he got from the attorney. If he got

1 it later from someplace else, that's -- that's not what
2 we're objecting to. It's not a point in time, in other
3 words. It's who the conversation was with.

4 Q. (BY MS. KLEIN) So you are not willing --
5 pursuant to your counsel's instruction, you are not
6 willing to tell me whether you were aware of a
7 particular fact if that fact was told to you by your
8 attorney?

9 MR. RUSSO: That's like it's an
10 oversimplification of our objection but...

11 THE WITNESS: And I will also say that
12 that's the only place I got the information from. So
13 there was not a point where someone else gave me
14 information that would not be privileged information.

15 Q. (BY MS. KLEIN) So you are not willing to say
16 whether or not you were aware of a fact later if that
17 fact was told to you by counsel and only counsel?

18 A. I guess, yes.

19 MS. KLEIN: So is that attorney-client
20 privilege?

21 MR. RUSSO: That's -- I think that's an
22 oversimplification. What we would need to get into this
23 is particular questions on the record or -- we've had
24 this conversation. You've asked questions and we've
25 objected. To be able to just sort of incapsulate the

1 argument here, I mean, you can look at the letter brief
2 and go into the witness with it is probably improper.
3 But the point is it's going to -- it dependent upon the
4 question that you're asking the way you're asking him.

5 MS. KLEIN: I am going to be fully
6 forthright that I do not understand your privilege
7 objection and the basis for it. So I am trying to
8 understand that you are instructing your -- and you're
9 not the witness in this and that's why I'm talking to
10 him because he's following your advice.

11 But -- and I want to make sure he
12 understands what he is not willing to provide. I want
13 to make sure the witness understands what testimony he
14 is not willing to provide in this deposition. So that's
15 why I'm going through him. I'm not trying to get
16 between you two.

17 MR. RUSSO: Sure.

18 MS. KLEIN: And I'm -- I'm just confirming
19 that if he was shown -- if he was shown partisan data
20 from his attorney, he is not willing to testify about
21 his awareness of that partisan data at a later date
22 because he says he only got it from his attorney. Am I
23 understanding it correctly?

24 MR. RUSSO: No, again. That's over --
25 overly simplified. The point of the objection and the

1 privilege is to prevent disclosure of communications
2 related to the provision of legal services. So to the
3 extent that the facts are provided with a specific
4 regard and primarily for the purpose of providing legal
5 services, those communications are not going to be
6 disclosed.

7 MS. KLEIN: So if I don't -- I don't care
8 about the context of this. I don't care if he was --
9 why he was reviewing them. I don't care what questions
10 about legal advice he was -- I don't care about any of
11 that.

12 All I want to know is if at a later date
13 and specifically when he was choosing Map Proposal 2, I
14 want to know what data he was aware of at the point he
15 was choosing Map Proposal 2, which I believe was, based
16 on our testimony, around October 29th when he made that
17 Facebook post.

18 MR. RUSSO: Right. And here's the answer
19 to my response and this is what I've instructed the
20 witness. To the extent that provision of data or facts
21 is balled up with Mr. Oldham providing legal services,
22 he can't answer that question. If it's just here's some
23 facts, that's it. That's a different story. If it's
24 just here, look at the -- look at the data.

25 MS. KLEIN: But I'm not asking for the

1 context of them at all. I'm not going to follow up --

2 MR. RUSSO: I get it. And the problem is
3 is that we've got to rely on the witness to say the
4 communication basically was part of providing legal
5 services, and I think he's established that.

6 But -- so the idea or notion that, well,
7 you know, there are objections just based upon one thing
8 or another is -- again, it's oversimplifying.

9 MS. KLEIN: All right. Maybe I'll just
10 probe a little bit.

11 Q. (BY MS. KLEIN) How was the discussion of
12 partisan data part of the provision of legal advice? I
13 mean, was -- let me ask this first.

14 Was any discussion you had with your
15 lawyers about partisan data part of the provision of
16 legal advice?

17 A. What was that?

18 Q. Was the -- was any -- you said that you
19 couldn't answer what -- you couldn't answer me what
20 exact partisan data you had seen when you voted for Map
21 Proposal 2 or before you had voted for Map Proposal 2
22 what you were aware of because you had learned that from
23 your attorney. So let me ask you this.

24 When you learned that from your attorney,
25 was that part of you seeking or them providing specific

1 legal advice?

2 A. I'd say yes. It wasn't strictly -- that's it.

3 MR. RUSSO: But that's where the privilege
4 applies.

5 Q. (BY MS. KLEIN) You know -- so is your
6 understanding that compliance with state and federal law
7 relates to the partisan composition of the precincts
8 you'd be voting on?

9 MR. RUSSO: Object as speculative and calls
10 for a legal conclusion.

11 THE WITNESS: So I would ask again. Am
12 I --

13 Q. (BY MS. KLEIN) Was -- is your understanding
14 based on that answer that the partisan composition of
15 the enacted precincts for commissioners you'd be voting
16 on was related to their legal compliance to whether they
17 were legally compliant?

18 A. I can't say --

19 MR. RUSSO: You responded that the
20 discussion that you're asking about factually relates to
21 the provision of legal services. That's all we can
22 provide you. I mean, that's where the privilege
23 applies. So I think we've established that.

24 Q. (BY MS. KLEIN) So what would you say -- so if
25 you learned certain facts from an attorney, are you

1 saying that you can never discuss that again with
2 anybody?

3 A. I think that I'd be saying that I am allowed to
4 not discuss that with anybody.

5 Q. So have you talked with anybody besides your
6 attorneys about the partisan composition of the enacted
7 2021 commissioner's precinct map?

8 A. I don't know who it would be. Honestly, most
9 people don't care.

10 Q. If a constituent asked you, hey, when you voted
11 for Map Proposal 2, did you know that, you know, each
12 commissioner's precinct was going to be a Republican
13 precinct, how would you answer that question?

14 A. My belief would be yes.

15 Q. And why would your belief be yes to that
16 question?

17 A. Because I simply don't think it's possible to
18 draw a precinct that would elect a Democrat without
19 making it look like a handprint as I described it.

20 Q. And why do you believe that?

21 A. Just based on the numbers that I see in the
22 general election. If 34 percent tend to vote Democrat
23 in a gubernatorial year and they're all spread all
24 across the county, you don't have 25 percent in any one
25 location.

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REPORTER'S CERTIFICATION
DEPOSITION OF MARK A. HENRY

TAKEN JANUARY 17, 2023

I, Janalyn Elkins, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

That the witness, MARK A. HENRY, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to
HILARY HARRIS KLEIN;

That a copy of this certificate was served on
all parties and/or the witness shown herein on
_____.

I further certify that pursuant to FRCP No.
30(f)(i) that the signature of the deponent was
requested by the deponent or a party before the
completion of the deposition and that the signature is
to be returned within 30 days from date of receipt of
the transcript. If returned, the attached Changes and
Signature Page contains any changes and the reasons
therefor.

I further certify that I am neither counsel
for, related to, nor employed by any of the parties in
the action in which this proceeding was taken, and

1 further that I am not financially or otherwise
2 interested in the outcome of the action.

3 Certified to by me this 20th day of January
4 2023.

5 

6 JANALYN ELKINS

7 Texas CSR 3631

8 Expiration Date 1/31/2023

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